



TELECOMMUNICATIONS OMBUDSMAN'S OFFICE

RULES OF PROCEDURE

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## SECTION I: Definitions

End-user: a user not providing a public electronic communication network or publicly available electronic communication services, as defined in the Electronic Communications Act of 13 June 2005.

Consumer: any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession, as defined in the Electronic Communications Act of 13 June 2005.

Telecommunications undertaking (hereinafter "undertaking"): any operator; any person compiling, selling or distributing a directory; any person providing a directory enquiry service; any person operating electronic communications systems; any person providing encryption services to the public and any person offering other activities relating to electronic communications; within the meaning of the Electronic Communications Act of 13 June 2005.

Complaint: any dispute between an end-user and a telecommunications company relating to the performance of a sales or service contract or the use of a product, including consumer disputes.

Consumer dispute: any dispute between a consumer and an undertaking relating to the performance of a sales or service contract or the use of a product.

Qualified entity: any entity, either private or created by a public authority, for alternative dispute resolution for consumer disputes which appears on the list drawn up by the Federal Public Service Economy, SMEs, Self-Employed and Energy and submitted to the European Commission.

## SECTION II: Handling of complaints by the telecommunications companies

### Article 1: Internal complaint handling service

In the event of a dispute, the end-user may submit a complaint directly to the service within the telecommunications company concerned which is responsible for handling complaints.

### Article 2: Period and handling of complaints by the undertakings

The undertaking shall respond to complaints without delay and take due care to seek a satisfactory solution.

If a complaint is not resolved within a reasonable period, the undertaking shall provide the end-user, on its own initiative, with the contact details of the Telecommunications Ombudsman's Office, and specify that this body is a qualified entity.

This information is to be provided on paper or on another durable medium.

## SECTION III: Telecommunications Ombudsman's Office

### Article 3: Nature of the Telecommunications Ombudsman's Office

The Telecommunications Ombudsman's Office, which was set up within the Belgian Institute for Postal and Telecommunications Services by the Act of 21 March 1991 on the reform of certain public business undertakings, has powers concerning the relations between the end-user, within the meaning of the prevailing legislation on electronic communications, and telecommunications undertakings. Within the limits of its powers, the Ombudsman's Office does not take instructions from any authority.

### Article 4: Powers of the Telecommunications Ombudsman's Office

The Telecommunications Ombudsman's Office has the following missions:

1° to examine any complaints from end-users relating to the activities of telecommunications undertakings;

2° to act as a mediator in order to facilitate an amicable settlement in disputes between the undertakings and end-users;

3° to make a recommendation to the undertakings in the event that an amicable settlement cannot be reached; a copy of the recommendation shall be sent to the complainant;

5° to provide end-users who contact them verbally or in writing with the best available advice on their interests;

6° to issue opinions in relation to its tasks, at the request of the Minister responsible for Telecommunications, the Minister responsible for Consumer Protection or the Belgian Institute of Postal Services and Telecommunications or the Consultative Committee on Telecommunications (or ministers from the Communities who are responsible for radio and television programmes and Community radio and television regulators which come under the powers of the Telecommunications Ombudsman's Office);

7° to examine an application by any person claiming to be the victim of malicious use of an electronic communications network or service, seeking notification of the identity and the address of the electronic communications network or service users who have been causing him/her annoyance, provided that this information is available. However, this type of application is not subject to these rules of procedure.

8° cooperate with:

a) other independent sector-specific dispute commissions or independent ombudsmen, including by passing on complaints which do not come within the powers of the Telecommunications Ombudsman's Office to the relevant dispute commission or Ombudsman's Office;

b) foreign ombudsmen or bodies having an equivalent function which act as an appeal body handling complaints falling within the area of responsibility of the Telecommunications Ombudsman's Office;

c) the regulators of the Communities.

## SECTION IV: Handling of complaints by the Telecommunications Ombudsman's Office

### Article 5: Referral to the Telecommunications Ombudsman's Office

An application for alternative dispute resolution of a dispute may be submitted to the Telecommunications Ombudsman's Office at its offices, by letter (Koning Albert II-laan 8 bus 3–1000 Brussel), by fax (02 - 219 86 59), by e-mail ([klachten@ombudsmantelecom.be](mailto:klachten@ombudsmantelecom.be)) or by completing the form on the website of the Telecommunications Ombudsman's Office ([www.ombudsmantelecom.be](http://www.ombudsmantelecom.be)). These applications may be submitted in French, Dutch, German or English. The procedure may be conducted in these languages.

### Article 6: Rules and legal provisions on which the Telecommunications Ombudsman's Office is based

As part of its mission, the Ombudsman's Office bases its activities on all the legal provisions applicable in the specific case at issue. The Ombudsman's Office may base its activities on (this is a non-exhaustive list) international treaties, European Directives or Regulations, Belgian legislation (Civil Code, Code of Economic Law, Electronic Communications Act, Royal Decree establishing the Code of Ethics for Telecommunications, other sector legislation...) and any codes of conduct (e.g. GOF).

### Article 7: Complete application

Once the Telecommunications Ombudsman's Office has all the documents necessary for the examination of the application's admissibility, it shall inform the parties of the receipt of the complete application and the date of receipt.

If appropriate, the prior request submitted to the internal complaints handling service of the undertaking concerned as well as any actions taken in response to it may be appended to the application for alternative dispute resolution sent to the Telecommunications Ombudsman's Office.

Failing that, the Ombudsman's Office shall ask the end-user to complete his/her application, using a durable medium.

## Article 8: Inadmissibility of the application for alternative dispute resolution

The Telecommunications Ombudsman's Office shall refuse to handle an application for alternative dispute resolution:

1° if the complaint in question has not been submitted beforehand to the undertaking concerned;

2° if the complaint in question was submitted to the undertaking concerned more than a year ago;

3° if the complaint is frivolous, vexatious or defamatory;

4° if the complaint is anonymous or the other party is not identified or identifiable;

5° if the complaint relates to a dispute which is or already has been the subject of judicial proceedings;

6° if the complaint relates to a dispute which does not come within the powers of the Telecommunications Ombudsman's Office.

7° if the handling of the dispute would seriously impair the effective operation of the Telecommunications Ombudsman's Office.

## Article 9: Decision to deal with or refuse to deal with the application for alternative dispute resolution & information of the parties

Within three weeks following receipt of the complete application, the Telecommunications Ombudsman's Office shall inform the parties of its decision to deal with or refuse to deal with the application.

In case of refusal, the reasons for the decision shall be given.

If the Ombudsman's Office decides to consider the application, it will also inform the end-user of his/her right to withdraw from the procedure at any stage. It shall also inform the parties that they have the choice as to whether or not to agree to the solution proposed (except in the case of a recommendation that becomes enforceable for the undertaking – see Article 12), that this solution may be different from an outcome determined by a court, and that participation in the procedure does not preclude initiating judicial proceedings. It shall also inform the parties that the solution is not binding in nature (except in the case of a recommendation that becomes enforceable for the undertaking – see Article 12) and that this solution does not have legal or technical consequences (unless the parties call on the court to sanction the agreements reached or in the case of a recommendation that becomes enforceable for the undertaking – see Article 12).

The information of this article will be provided on a durable medium.



## Article 10: Means for exchanging information

The parties may exchange information with the Telecommunications Ombudsman's Office by electronic means, by post and/or by fax. If the consumer so wishes, he/she may visit the premises of the Telecommunications Ombudsman's Office in person. The parties shall have a reasonable period to take cognizance to all the documents, arguments and facts put forwards by the other party. These periods are described in the article 11.

## Article 11: Periods

Within 90 calendar days following receipt of the complete application, the Telecommunications Ombudsman's Office shall notify the outcome of the dispute resolution to the parties, on a durable medium.

In exceptional circumstances, this period may be extended once, for an equivalent period, on condition that the parties are informed of this before the expiry of the initial period, and that this extension is due to the complexity of the dispute.

The parties shall have a period of 10 calendar days to express their points of view (unless provided otherwise if a memorandum of agreement has already been signed with an undertaking). The same period will apply for taking cognizance of and responding to all the documents, arguments and facts put forward by the other party or any request from the Telecommunications Ombudsman's Office (unless provided otherwise if a memorandum of agreement has already been signed with an undertaking).

## Article 12: Closure of the case

If the Telecommunications Ombudsman's Office has obtained an amicable settlement of the dispute, it closes the case and sends a confirmation to the parties in writing or on another durable medium.

If an amicable settlement cannot be reached, the Telecommunications Ombudsman's Office shall inform the parties in writing or on another durable medium and may make a recommendation to the undertaking concerned, with a copy to the applicant.

If the undertaking concerned does not follow this recommendation, it has a period of twenty working days to make its reasons known. The reasoned decision is sent to the complainant and the Telecommunications Ombudsman's Office. On expiry of the period of 20 working days, the Telecommunications Ombudsman's Office sends a reminder to the undertaking concerned. If the undertaking concerned does not follow the recommendation, it has another period of twenty working days to make its reasons known. The reasoned decision is sent to the complainant and the Telecommunications Ombudsman's Office.

If it fails to comply with the periods shown above, the undertaking concerned undertakes to implement the recommendation with regard to the specific and personal intervention of the complainant concerned.

### Article 13: Possible recourse to an expert

If the complexity of the application requires it, the Telecommunications Ombudsman's Office may seek the assistance of experts. The recourse is at no cost to the parties.

### Article 14: Prerogatives of the Telecommunications Ombudsman's Office

The Ombudsman's Office may, in the context of a complaint referred to it, inspect on the spot any books, correspondence, minutes and in general any documents or records of one or more undertakings concerned relating directly to the subject matter of the complaint. It may demand any explanations or information from the directors and personnel of one or more of the undertakings concerned, and carry out any verifications necessary for its inquiries.

### Article 15: Confidentiality

Any information that the Telecommunications Ombudsman's Office obtains in the context of handling a complaint shall be treated as confidential.

It may only be used in the context of the alternative dispute resolution, with the exception of its processing in connection with the annual report.

### Article 16: Impartiality

The Ombudsman's Office consists of two members; they each speak a differential official language of Belgium. The Ombudsman's Office acts as a board. Each member of the Ombudsman Board shall notify the other member, without delay, of any circumstances that might affect his or her independence or impartiality or give rise to a conflict of interests with either party to the dispute they are asked to resolve. The other member will then take over the handling of the application for alternative dispute resolution. If that is not possible, the entity shall propose to the parties to submit the dispute to another qualified entity; if it proves impossible to submit the dispute to another qualified entity, this will be brought to the attention of the parties, which may oppose the continuation of the procedure by the natural person who is in the circumstances described.

Along the same lines, members of staff who are involved in procedures for alternative dispute resolution shall inform the Ombudsmen Board of any circumstances that might affect their independence or impartiality or give rise to a conflict of interests with either party to the dispute they are asked to resolve.

## Article 17: Suspension of limitation and prescription periods

In the event that the end-user is a consumer, the limitation and prescription periods applicable under general law shall be suspended as from the date of receipt of the complete application.

This suspension shall last until the date when the Telecommunications Ombudsman's Office notifies the parties:

- of its decision to refuse to deal with the application;
- of the outcome of the amicable settlement.

## Article 18: Suspension of recovery procedures

Once the undertaking has been informed of the receipt by the Ombudsman's Office of the complete application, it shall suspend any recovery action, for a maximum period of 4 months, or until the Ombudsman's Office formulates a recommendation or until agreement is reached on alternative resolution.

Concerning complaints referred to in Article 19 §3 of the Act of 15 May 2007 on consumer protection in relation to radio transmission and broadcasting services, the collection procedure shall be suspended by the undertaking until the Ombudsman's Office formulates a recommendation or until agreement is reached on alternative resolution.

## Article 19: Free service

Handling of an application for alternative dispute resolution for a dispute by the Ombudsman's Office shall be free of charge for the end-user.

## Article 20: Withdrawal of the complaint

The end-user has the possibility of withdrawing from the procedure at any time. To do so, he/she should inform the Ombudsman's Office on a durable medium.

## Article 21: Representation

If the parties so wish, they may arrange to be assisted or represented by a third party. They may also seek independent advice at any time.